

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. C-1-82-179
)	
v.)	Filed: February 22, 1982
)	
BALDWIN-UNITED CORPORATION and)	
MGIC INVESTMENT CORPORATION,)	
)	
Defendants.)	
_____)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§16 (b)-(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment against defendants in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On February 22, 1982, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. §25, challenging the acquisition of MGIC Investment Corporation ("MGIC") by Baldwin-United Corporation ("Baldwin") as a violation of Section 7 of the Clayton Act, 15 U.S.C. §18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the provision of private mortgage guarantee insurance ("PMI") throughout the United States.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the

provisions of the proposed Judgment, and to punish violations of the proposed Judgment.

II. EVENTS GIVING RISE TO THE ALLEGED VIOLATION

Private mortgage guarantee insurance reduces a lender's risk of loss in the event of the borrower's default on a residential mortgage loan. When a borrower defaults on a mortgage that is covered by a PMI policy, the PMI insurer generally pays the lender a predetermined percentage (usually 20 or 25%) of the outstanding mortgage balance plus certain other expenses. Typically, PMI coverage involves "low equity" mortgages (i.e., mortgages with less than a 20% down payment). Lenders frequently require PMI insurance as a condition of granting a conventional low equity mortgage to a borrower. The borrower pays the insurance premium for the benefit of the lender. In 1980, PMI firms received over \$300 million in premiums for providing PMI coverage.

MGIC is an insurance holding company whose principal line of business is writing PMI policies. MGIC is the oldest and largest PMI company. In 1980 MGIC received approximately \$129 million in premiums from the PMI business. In 1980, MGIC's share of the PMI market was approximately 41% of all PMI premiums earned and 39.7% of earned premiums on newly written PMI policies.

Baldwin is a holding company that owns a number of businesses, including a variety of insurance businesses. Baldwin owns a 92% interest in AMIC Corporation ("AMIC"), which it acquired from Merrill Lynch & Co. on December 1, 1981. AMIC is the sixth largest PMI company. It is licensed to write PMI policies in 47 states and it actually does such business in 43 states. In 1980 AMIC received approximately \$17 million in earned PMI premiums. AMIC's share of the PMI market is approximately 7% of all premiums earned and 4% of earned premiums on newly written PMI policies. On December 13, 1981, Baldwin agreed to acquire MGIC for approximately \$1.2 billion in cash.

In addition to MGIC and AMIC there are approximately thirteen other firms that write PMI. In 1980 the four largest PMI companies accounted for approximately 73% of all earned PMI premiums, and the eight largest accounted for approximately 96% of all earned PMI premiums.

MGIC and AMIC are direct competitors in the sale of PMI in the United States. That competition takes several forms, including (a) providing faster and otherwise better service on policy approvals and claims, and providing such additional services to mortgage lenders as conducting educational programs for those lenders and aiding those lenders in reselling mortgages in the secondary markets; (b) developing new PMI policies principally for use in covering "creative financing" packages (e.g., coverage of adjustable rate, graduated payment and "wrap-around" mortgages); and (c) some price competition covering at least certain types of PMI policies.

Based upon the foregoing facts, the complaint alleges that the effect of the acquisition may be substantially to lessen competition in the sale of PMI in violation of Section 7 of the Clayton Act.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

The proposed Final Judgment orders Baldwin to divest all direct or indirect ownership interest in AMIC by February 8, 1983. If Baldwin does not during this time period effect divestiture by means of a sale to a third party or otherwise

(including any possible spin-off that Baldwin might elect to pursue), then Baldwin must spin-off all its interest in AMIC to Baldwin's shareholders on February 8, 1983. This spin-off is to be accomplished through the services of a divestiture agent who shall be proposed by Baldwin subject to the approval of the United States. The divestiture agent shall have the power and authority to effect a spin-off on February 8, 1983, should this become necessary. The proposed Judgment also provides for an extension of time, for a period not to exceed six months from February 8, 1983, if Baldwin has been unable to obtain necessary approvals from state insurance commissioners or other state and federal agencies having jurisdiction. No other extensions may be granted.

Until divestiture of AMIC is accomplished, the hold-separate provisions of the proposed Final Judgment preclude Baldwin from exercising control over the conduct of AMIC's business. Baldwin must maintain persons on the AMIC Board of Directors who are demonstrably independent of Baldwin's control. AMIC's directors must not be officers, directors or employees of Baldwin, nor may they have any other substantial business relationship with Baldwin. AMIC's directors are to have the same responsibilities as directors of any independent corporation. In addition, the proposed Final Judgment forbids any communication of competitive information by AMIC to Baldwin or MGIC. In furtherance of these obligations, Baldwin shall not share personnel with AMIC, engage in financial or other transactions with AMIC, nor use any advertising or public relations agency that is now being used by AMIC. AMIC's directors and officers are to submit affidavits stating that they will comply with terms of the proposed Judgment.

The proposed Final Judgment requires Baldwin to submit periodic reports to the plaintiff describing the steps that it has taken to comply with the Judgment. Baldwin must also give plaintiff notice of any proposed divestiture prior to closing so as to allow the United States time to object to the

proposal. Upon timely objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. §15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. §16(a)), the proposed Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the

United States will be filed with the court and published in the Federal Register.

Written comments should be submitted to:

Stanley M. Gorinson, Chief
Special Regulated Industries Section
Antitrust Division (SAFE-504 B)
U.S. Department of Justice
Washington, D.C. 20530

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to a consent decree, the United States had considered seeking a preliminary injunction to block Baldwin's acquisition of MGIC. After informing defendants of this alternative, plaintiff chose to negotiate the proposed Final Judgment since the Baldwin/MGIC transaction appeared to be a situation that warranted departure by the United States from its usual policy of insisting upon the elimination of competitive overlaps before consummation of an acquisition or merger. Until 1979, AMIC had a long history of being a successful free-standing PMI firm and even after it affiliated with Merrill Lynch AMIC continued to be operated as a separate business. AMIC's management currently has a significant equity ownership interest in that firm. AMIC has proven itself capable of operating, both in the interim and in the future, as an independent and effective competitor. Thus, if Baldwin does not divest AMIC by February 8, 1983, the divestiture agent's immediate spin off of AMIC to Baldwin's shareholders is a rapid mechanism for reestablishing AMIC as a wholly independent competitor.

Moreover, AMIC would continue to operate as an independent company under the hold-separate provisions of the proposed Final Judgment. Besides having to maintain a completely independent AMIC Board of Directors, Baldwin also would be precluded from exercising control over the conduct of AMIC's business. No competitive information could be communicated by AMIC to Baldwin or MGIC. Thus, these provisions would guard against potential anticompetitive effects until such time as divestiture is accomplished.

Since the relief obtained in the proposed Final Judgment eliminates the anticompetitive effects of the acquisition, it is substantially similar to the relief the United States would expect to obtain after a trial on the merits, assuming that no preliminary injunction had been initially obtained.

Although most provisions of the proposed Judgment were revised and refined in the course of negotiations, no other relief substantially different in kind was considered by the United States.

VII. DETERMINATIVE DOCUMENTS

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Therefore, none are being filed along with this Competitive Impact Statement.

Respectfully submitted,

/s/ John V. Thomas
John V. Thomas

/s/ Gordon G. Stoner
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/s/ Julie L. Akins
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